

Application Number**Application/Control No.**

10/525,048

**Applicant(s)/Patent under
Reexamination**

PELKA ET AL.

Examiner

Vaughn T. Coolman

Art Unit

3618



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,048	10/25/2005	Joachim Pelka	03100228AA	5674
30743 7590 05/04/2007 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			EXAMINER COOLMAN, VAUGHN	
			ART UNIT 3618	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,048

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 7 is/are allowed.
- 6) ☒ Claim(s) 12 is/are rejected.
- 7) ☒ Claim(s) 3,5,6,10 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 3, 5, 6, 10, and 11 are objected to because of the following informalities: claim 3 depends from a cancelled claim (claim 2). The error then propagates to the remaining claims listed above. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tunkers in view of Mundy.

[claim 12] Tunkers discloses a wheelchair (FIGS 1-2), particularly an electric wheelchair, including:

- a frame (9) which has telescopic tubes (10, 11),
- a seat (24) fastened to said frame, said seat having a backrest (FIG 1),
- at least one steerable wheel (3, 4) which is mounted rotatably about a horizontal axis (7) of rotation and is connected to a first tube (10) of said telescopic tubes,

- at least one non-steerable wheel (1, 2) which is connected to a second tube (11) of said telescopic tubes,

wherein a wheelbase between said at least one steerable wheel and said at least one non-steerable wheel is adjustable in an infinitely variable manner by telescopic extension of said telescopic tubes (Page 1, lines 83-94),

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Tunkers does not disclose the distance between the horizontal axis of rotation of the at least one steerable wheel and the frame being adjustable or the telescopic tubes being inclined with respect to a tire contact area of the wheels.

Mundy teaches a wheelchair wherein a distance between an [said horizontal] axis of rotation of at least one steerable wheel (28, 30) and a frame (shown in FIG 1) being adjustable (utilizing the multiple axle locations of the non-steerable wheel when in an aligned relationship with frame member 40 as taught), and further teaches the frame members that are connected to the steerable wheels (28,30) and the non-steerable wheels (24, 26) are inclined with respect to a tire contact area of the at least one steerable wheel and the at least one non-steerable wheel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Tunkers with the adjustable wheel/frame configuration and the inclined frame as taught by Mundy, since such a modification would provide the advantage of increasing ground clearance when negotiating vertical obstacles such as curbs.

Allowable Subject Matter

Claims 1 and 7 are allowed.

Claims 3, 5, 6, 10, and 11 are objected to as being dependent upon a cancelled base claim, but would be allowable if rewritten to depend from claim 1 or other allowable claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

Applicant's arguments filed 2/16/2007 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually (bottom of page 10), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the first paragraph of page 11, Examiner is unclear of applicant's intent in the circular argument stating "Mundy teaches . . . the rear wheel in front of the center of gravity, and that optimal stability results from placing the center of gravity in front of the rear wheels."

Examiner notes that no suggestion was made in the Office action to cut and extract the telescopic structure from Tunkers and place it in the structure of Mundy. The rejection is based on *Tunkers in view of Mundy*, where Mundy provides the teaching of inclining the main frame tubes of a wheelchair. Inclining the telescoping tube frame of Tunkers would not require the extensive modification described by applicant. Furthermore, the modification would preferably take place on the design stage prior to actual production and assembly of the wheelchair.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of

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ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., adjusting the distance between the axis of rotation and the frame "avoids[ing] the off-vertical angle that would otherwise result) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

vtc  04/30/07

Travis Coolman
Examiner
Art Unit 3618



CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600